

AMENDED IN ASSEMBLY FEBRUARY 1, 2010

AMENDED IN SENATE JUNE 2, 2009

AMENDED IN SENATE MAY 4, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 565

Introduced by ~~Senator Pavley~~ Senators Pavley and Steinberg
(Principal coauthor: Assembly Member Huffman)

February 27, 2009

~~An act to add Part 5.5 (commencing with Section 12567) to Division 6 of the Water Code, relating to water recycling. An act to amend Sections 6103.1 and 6103.4 of the Government Code, to amend Sections 1052, 1055, 1055.2, 1055.3, 1120, 1228.5, 1228.7, 1525, 1535, 1538, 1550, 1551, 1825, 1845, 5103, and 5106 of, and to add Sections 1051.1, 1240.5, 1826, 1846, and 1847 to, the Water Code, relating to water resources.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 565, as amended, Pavley. ~~Water recycling. resources.~~

(1) Existing law generally prohibits the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, from being required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality.

This bill would expand the exemption to other provisions relating to water use, including provisions that require the payment of fees to the

State Water Resources Control Board (board) for official services relating to statements of water diversion and use.

(2) Existing law authorizes the board to investigate all streams, stream systems, lakes, or other bodies of water, take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state. Existing law requires the board to take appropriate actions to prevent waste or the unreasonable use of water. Under existing law, the board makes determinations with regard to the availability of recycled water.

This bill would authorize the board, in conducting an investigation or proceeding for these purposes, to order any person or entity that diverts water or uses water to submit any technical or monitoring report related to the diversion or use of water by that person or entity. The bill would authorize the board, in connection with the investigation or proceeding, to inspect the facilities of any person or entity to determine compliance with specified water use requirements.

(3) Existing law declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the administrative imposition of civil liability by the board for a trespass in an amount not to exceed \$500 for each day in which the trespass occurs. Moneys generated by the imposition of civil liability under these provisions are deposited in the Water Rights Fund.

This bill would provide that a person or entity committing a trespass may be liable in an amount not to exceed the sum of \$1,000 or \$5,000 for each day in which the trespass occurs, as specified, or the highest market value of the water, as specified, whichever is the greater amount. The moneys would be required to be deposited in the Water Rights Fund, as specified. The bill would establish the Water Rights Protection Subaccount in the Water Rights Fund. Specified penalties would be required to be deposited in the subaccount. The bill would state legislative intent regarding the expenditure of the moneys in the subaccount.

(4) Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the board a prescribed statement of diversion and use. Existing law requires a statement to include specified information, including, on and after January 1, 2012, monthly records of water diversions.

This bill would establish a rebuttable presumption, as specified, in any proceeding before the board in which it is alleged that an

appropriative right has ceased or is subject to prescribed action, that no use required to be included in a statement of diversion and use occurred unless that use is included in a statement that is submitted to the board within a specified time period.

The bill would require a person who files a statement of diversion and use, and certain petitions involving a change in a water right, to pay an annual fee, for deposit in the Water Rights Fund. The bill would include as recoverable costs, for which the board may be reimbursed from the fund upon appropriation therefor, costs incurred in connection with carrying out requirements relating to the statements of diversion and use and the performance of duties under the public trust doctrine and provisions that require the reasonable use of water.

(5) Existing law authorizes the board to issue a cease and desist order against a person who is violating, or threatening to violate, certain requirements, including requirements set forth in a decision or order relating to the unauthorized use of water. Any person who violates a cease and desist order may be liable in an amount not to exceed \$1,000 for each day in which the violation occurs. Revenue generated from these penalties is deposited in the Water Rights Fund.

This bill would increase, as specified, the civil penalties that apply to a person who violates a cease and desist order. The bill would impose civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for a failure to comply with various reporting or monitoring requirements, including requirements imposed pursuant to the public trust doctrine. The bill would authorize the board to impose additional civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for the violation of a permit, license, certificate, or registration, or an order or regulation involving the unreasonable use of water. The board would be required to establish a schedule of penalties that applies to small farms for de minimus water right violations. Funds derived from the imposition of these civil penalties would be deposited in the Water Rights Fund, as specified.

The bill would establish, in a proceeding before the board in which it is alleged that an appropriative water right has ceased, or is subject to prescribed action, a rebuttable presumption that no use occurred on or after January 1, 2010, unless that diversion or use was included in a specified statement submitted to the board within 6 months after the statement is required to be filed with the board, as specified.

~~Existing law establishes the State Water Resources Control Board and the California regional water quality control boards as the principal~~

~~state agencies with authority over matters relating to water quality. Existing law requires specified persons who discharge waste, as defined, in a manner that could affect the quality of the waters of the state, to pay an annual fee to the state board according to a fee schedule established by the board.~~

~~This bill would require the board, in consultation with the Department of Water Resources and the State Department of Public Health, to develop a plan to ensure that at least 50% of wastewater that is annually discharged into the ocean, as of the year 2009, is recycled and put to beneficial use by the year 2030. The bill would prescribe various requirements with respect to that plan. The bill would require the board to impose a fee on specified persons discharging wastewater into the ocean, the San Francisco Bay, or any other enclosed bay in the state, and would require that fee to be deposited into the Ocean Discharge Recycling Fund, which the bill would establish. The bill would authorize the board to expend the moneys in that fund, upon appropriation by the Legislature, for the purposes of carrying out the wastewater recycling plan.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6103.1 of the Government Code is
2 amended to read:

3 6103.1. Section 6103 does not apply to any fee or charge for
4 official services required by ~~Parts~~ Part 1 (commencing with Section
5 1000), Part 2 (commencing with Section 1200), Part 3
6 (commencing with Section 2000), ~~and~~ Part 4 (commencing with
7 Section 4000), Part 5 (commencing with Section 4999), or Part
8 5.1 (commencing with Section 5100), of Division 2, Division 7
9 (commencing with Section 13000), or Division 35 (commencing
10 with Section 85000) of the Water Code.

11 SEC. 2. Section 6103.4 of the Government Code is amended
12 to read:

13 6103.4. Section 6103 does not apply to any fee or charge for
14 official services required by Section 100860 of the Health and
15 Safety Code, ~~or Part 5 (commencing with Section 4999) of Division~~
16 ~~2, or Division 7 (commencing with Section 13000), of the Water~~
17 Code.

1 *SEC. 3. Section 1051.1 is added to the Water Code, to read:*

2 *1051.1. (a) In conducting any investigation or proceeding*
3 *specified in Section 275 or 1051, or Article 7 (commencing with*
4 *Section 13550) of Chapter 7 of Division 7, the board may order*
5 *any person or entity that diverts or uses water to prepare and*
6 *submit to the board any technical or monitoring program reports*
7 *related to that person's or entity's diversion or use of water as the*
8 *board may specify. The costs incurred by the person or entity in*
9 *the preparation of those reports shall bear a reasonable*
10 *relationship to the need for the report and the benefit to be obtained*
11 *from the report. If the preparation of individual reports would*
12 *result in a duplication of effort, or if the reports are necessary to*
13 *evaluate the cumulative effect of several diversions or uses of*
14 *water, the board may order any person or entity subject to this*
15 *subdivision to pay a reasonable share of the cost of preparing*
16 *reports.*

17 *(b) Any order issued under this section shall be served by*
18 *personal service or registered mail on the party required to submit*
19 *technical or monitoring program reports or to pay a share of the*
20 *costs of preparing reports. Unless the board issues the order after*
21 *a hearing, the order shall inform the party of the right to request*
22 *a hearing within 30 days after the party has been served. If the*
23 *party does not request a hearing within that 30-day period, the*
24 *order shall take effect as issued. If the party requests a hearing*
25 *within that 30-day period, the board may adopt a decision and*
26 *order after conducting a hearing.*

27 *(c) Upon application of any person or entity or upon its own*
28 *motion, the board may review and revise any order issued pursuant*
29 *to this section, in accordance with the procedures set forth in*
30 *subdivision (b).*

31 *(d) In conducting any investigation or proceeding specified in*
32 *Section 275 or 1051, or Article 7 (commencing with Section 13550)*
33 *of Chapter 7 of Division 7, the board may inspect the facilities of*
34 *any person or entity to ascertain whether the purposes of Section*
35 *100 and this division are being met and to ascertain compliance*
36 *with any permit, license, certification, registration, decision, order,*
37 *or regulation issued under Section 275, this division, or Article 7*
38 *(commencing with Section 13550) of Chapter 7 of Division 7. The*
39 *board shall adopt regulations for procedures pursuant to Article*
40 *13 (commencing with Section 11460.10) of Chapter 4.5 of Part 1*

1 of Division 3 of Title 2 of the Government Code, and any time
2 extensions necessary to implement those regulations. Except in
3 the event of an emergency affecting the public health or safety, the
4 inspection shall be made with the consent of the owner or possessor
5 of the facilities or, if the consent is withheld, with a warrant duly
6 issued pursuant to the procedure set forth in Title 13 (commencing
7 with Section 1822.50) of Part 3 of the Code of Civil Procedure.

8 SEC. 4. Section 1052 of the Water Code is amended to read:

9 1052. (a) The diversion or use of water subject to this division
10 other than as authorized in this division is a trespass.

11 ~~(b) Civil liability may be administratively imposed by the board~~
12 ~~pursuant to Section 1055 for a trespass as defined in this section~~
13 ~~in an amount not to exceed five hundred dollars (\$500) for each~~
14 ~~day in which the trespass occurs.~~

15 ~~(c)~~

16 (b) The Attorney General, upon request of the board, shall
17 institute in the superior court in and for any county ~~wherein in~~
18 ~~which~~ the diversion or use is threatened, is occurring, or has
19 occurred ~~appropriate~~ an action for the issuance of injunctive relief
20 as may be warranted by way of temporary restraining order,
21 preliminary injunction, or permanent injunction.

22 ~~(d)~~

23 (c) (1) Any person or entity committing a trespass as defined
24 in this section may be liable ~~for a sum in an amount~~ not to exceed
25 ~~five hundred dollars (\$500) for each day in which the trespass~~
26 ~~occurs. The the greater of either of the following amounts:~~

27 (A) One thousand dollars (\$1,000) for each day in which the
28 trespass occurs for the first enforcement proceeding or five
29 thousand dollars (\$5,000) for each day in which the trespass occurs
30 for any subsequent enforcement proceeding.

31 (B) The highest market value of the water subject to the trespass
32 as determined on a regional basis.

33 (2) The Attorney General, upon request of the board, shall
34 petition the superior court to impose, assess, and recover any sums
35 pursuant to this subdivision. In determining the appropriate amount,
36 the court shall take into consideration all relevant circumstances,
37 including, but not limited to, the extent of harm caused by the
38 violation, the nature and persistence of the violation, the length of
39 time over which the violation occurs, and, *with respect to the*
40 *violation, the ability to pay, the effect on the ability to continue in*

1 *business, the corrective action, if any, taken by the violator, and*
2 *other matters as justice may require.*

3 *(3) Civil liability may be imposed by the board pursuant to*
4 *Section 1055.*

5 ~~(e)~~

6 *(d) (1) All funds recovered pursuant to this section shall be*
7 *deposited in the Water Rights Fund established pursuant to Section*
8 *1550.*

9 *(2) Any funds recovered pursuant to this section that exceed the*
10 *amounts that were authorized before January 1, 2011, shall be*
11 *deposited in the Water Rights Protection Subaccount in the Water*
12 *Rights Fund established pursuant to Section 1550.*

13 ~~(f)~~

14 *(e) The remedies prescribed in this section are cumulative and*
15 *not alternative.*

16 *(f) The increase in the amount of penalties that may be imposed*
17 *pursuant to the amendments made to this section by this act during*
18 *the 2009–10 Regular Session of the Legislature does not apply to*
19 *violations that occurred prior to January 1, 2011.*

20 *SEC. 5. Section 1055 of the Water Code is amended to read:*

21 *1055. (a) The executive director of the board may issue a*
22 *complaint to any person or entity on which administrative civil*
23 *liability may be imposed pursuant to Section 1052, ~~Section 1536,~~*
24 *~~Section 1845,~~ Article 4 (commencing with Section 1845) of Chapter*
25 *12 of Part 2 of Division 2, or Section 5107. The complaint shall*
26 *allege the act or failure to act that constitutes a trespass or violation,*
27 *the provision of law authorizing civil liability to be imposed, and*
28 *the proposed civil liability.*

29 *(b) The complaint shall be served by personal notice or certified*
30 *mail, and shall inform the party served that the party may request*
31 *a hearing not later than 20 days from the date the party was served.*
32 *The hearing shall be before ~~the board or~~ a member of the board*
33 *~~as it may specify in accordance with Section 183.~~*

34 ~~*(c) After any hearing, the member shall report a proposed*~~
35 ~~*decision and order to the board and shall supply a copy to the party*~~
36 ~~*served with the complaint, the board's executive director, and any*~~
37 ~~*other person requesting a copy. The member of the board acting*~~
38 ~~*as hearing officer may sit as a member of the board in deciding*~~
39 ~~*the matter. The board, after making an independent review of the*~~
40 ~~*record and taking any additional evidence as may be necessary*~~

1 ~~that could not reasonably have been offered before the hearing~~
2 ~~officer, may adopt, with or without revision, the proposed decision~~
3 ~~and order.~~

4 (c) *The board may adopt an order setting administrative civil*
5 *liability, or determining that no liability will be imposed, after any*
6 *necessary hearing.*

7 (d) Orders setting administrative civil liability shall become
8 effective and final upon issuance thereof and payment shall be
9 made.

10 *SEC. 6. Section 1055.2 of the Water Code is amended to read:*

11 1055.2. No person or entity shall be subject to both civil
12 liability imposed under Section 1055 and civil liability imposed
13 by the superior court under ~~subdivision (d) of Section 1052, Section~~
14 ~~1536, or Section 1845, or 1846~~ for the same act or failure to act.

15 *SEC. 7. Section 1055.3 of the Water Code is amended to read:*

16 1055.3. In determining the amount of civil liability, the board
17 shall take into consideration all relevant circumstances, including,
18 but not limited to, the extent of harm caused by the violation, the
19 nature and persistence of the violation, the length of time over
20 which the violation occurs, and *with respect to the violator, the*
21 *ability to pay, the effect on the ability to continue in business, the*
22 *corrective action, if any, taken by the violator, and other matters*
23 *as justice may require.*

24 *SEC. 8. Section 1120 of the Water Code is amended to read:*

25 1120. This chapter applies to any decision or order issued under
26 this part or Section 275, Part 2 (commencing with Section 1200),
27 Part 2 (commencing with Section 10500) of Division 6, Article 7
28 (commencing with Section 13550) of Chapter 7 of Division 7,
29 *Section 85230, or the public trust doctrine.*

30 *SEC. 9. Section 1228.5 of the Water Code is amended to read:*

31 1228.5. (a) Registration of a small domestic or livestock
32 stockpond use pursuant to this article shall be renewed prior to the
33 expiration of each five-year period following completed
34 registration.

35 (b) Renewal of registration shall be made upon a form prescribed
36 by the board and shall contain such report of water use made
37 pursuant to the registration as may be required by the board.

38 (c) The conditions established by the board pursuant to Section
39 1228.6 which are in effect at the time of renewal of registration

1 shall supersede the conditions which were applicable to the original
2 completed registration.

3 (d) Failure to renew registration in substantial compliance with
4 the reporting requirements prescribed by the board within the time
5 period specified in subdivision (a), or to pay the renewal fee
6 specified in subdivision (b) of Section ~~1228.8~~ 1525, shall result
7 by operation of law in the revocation of any right acquired pursuant
8 to this article.

9 *SEC. 10. Section 1228.7 of the Water Code is amended to read:*

10 1228.7. (a) Any registrant may change the point of diversion
11 or place of use by delivering to the board an amended registration
12 form in accordance with Section 1228.3, including payment of the
13 registration fee specified in ~~subdivision (a) of Section 1228.8~~
14 *Section 1525*, except that the purpose of the use may not be
15 changed and the change may not operate to the injury of any legal
16 user of the water involved.

17 (b) Any completed amended registration of water use continues
18 in effect the priority of right as of the date of the original completed
19 registration.

20 (c) All provisions of this article regarding appropriations made
21 pursuant thereto, including, but not limited to, provisions regarding
22 enforcement, are applicable to the appropriation as described in
23 the completed amended registration, except that the conditions
24 established by the board pursuant to Section 1228.6 which are in
25 effect at the time of completion of the amended registration shall
26 supersede the conditions which were applicable to the original
27 completed registration.

28 *SEC. 11. Section 1240.5 is added to the Water Code, to read:*

29 1240.5. (a) *In any proceeding before the board in which it is*
30 *alleged that a right to appropriate water has ceased or is subject*
31 *to forfeiture or revocation for nonuse, there shall be a rebuttable*
32 *presumption that no use occurred unless that use is included in a*
33 *statement submitted pursuant to any reporting or monitoring*
34 *requirement established under any permit, license, certificate,*
35 *registration, decision or order, or regulation issued by the board*
36 *pursuant to this division, Section 275, Article 7 (commencing with*
37 *Section 13550) of Division 7, or the public trust doctrine under*
38 *this part, and the statement is submitted within six months after it*
39 *is required to be filed with the board. This section does not apply*
40 *to any diversion or use that occurred before January 1, 2010.*

1 **(b)** *The rebuttable presumption established in subdivision (a)*
2 *applies only if the failure to file the statement is shown to be willful.*

3 **SEC. 12.** *Section 1525 of the Water Code is amended to read:*

4 1525. (a) Each person or entity who holds a permit or license
5 to appropriate water, and each lessor of water leased under Chapter
6 1.5 (commencing with Section 1020) of Part 1, shall pay an annual
7 fee according to a fee schedule established by the board.

8 (b) Each person or entity who files any of the following shall
9 pay a fee according to a fee schedule established by the board:

10 (1) An application for a permit to appropriate water.

11 (2) A registration of appropriation for a small domestic use or
12 livestock stockpond use.

13 (3) A petition for an extension of time within which to begin
14 construction, to complete construction, or to apply the water to
15 full beneficial use under a permit.

16 (4) A petition to change the point of diversion, place of use, or
17 purpose of use, under a *registration for small domestic use or*
18 *livestock stockpond use, or under a permit or license.*

19 (5) A petition to change the conditions of a permit or license,
20 requested by the permittee or licensee, that is not otherwise subject
21 to paragraph (3) or (4).

22 (6) *A petition under Section 1707 or 1740 to change the point*
23 *of diversion, place of use, or purpose of use of a water right that*
24 *is not subject to a permit or license to appropriate water.*

25 ~~(6)~~

26 (7) A petition to change the point of discharge, place of use, or
27 purpose of use, of treated wastewater, requested pursuant to Section
28 1211.

29 ~~(7)~~

30 (8) An application for approval of a water lease agreement.

31 ~~(8)~~

32 (9) A request for release from priority pursuant to Section 10504.

33 ~~(9)~~

34 (10) An application for an assignment of a state-filed application
35 pursuant to Section 10504.

36 (11) *A statement of water diversion and use pursuant to Part*
37 *5.1 (commencing with Section 5100).*

38 (c) The board shall set the fee schedule authorized by this section
39 so that the total amount of fees collected pursuant to this section
40 equals that amount necessary to recover costs incurred in

1 connection with the issuance, administration, review, monitoring,
2 and enforcement of permits, licenses, certificates, and registrations
3 to appropriate water, water leases, *statements of diversion and use*,
4 and orders approving changes in point of discharge, place of use,
5 or purpose of use of treated wastewater. The board may include,
6 as recoverable costs, but is not limited to including, the costs
7 incurred in reviewing applications, registrations, *statements of*
8 *diversion and use*, petitions and requests, prescribing terms of
9 permits, licenses, registrations, and change orders, enforcing and
10 evaluating compliance with permits, licenses, certificates,
11 registrations, change orders, and water leases, inspection,
12 monitoring, planning, modeling, reviewing documents prepared
13 for the purpose of regulating the diversion and use of water,
14 applying and enforcing *the public trust doctrine*, Section 275, the
15 prohibition set forth in Section 1052 against the unauthorized
16 diversion or use of water subject to this division, *the requirements*
17 *under Part 5.1 (commencing with Section 5100) for filing*
18 *statements of diversion and use*, and the administrative costs
19 incurred in connection with carrying out these actions.

20 (d) (1) The board shall adopt the schedule of fees authorized
21 under this section as emergency regulations in accordance with
22 Section 1530.

23 (2) For filings subject to subdivision (b), the schedule may
24 provide for a single filing fee or for an initial filing fee followed
25 by an annual fee, as appropriate to the type of filing involved, and
26 may include supplemental fees for filings that have already been
27 made but have not yet been acted upon by the board at the time
28 the schedule of fees takes effect.

29 (3) The board shall set the amount of total revenue collected
30 each year through the fees authorized by this section at an amount
31 equal to the revenue levels set forth in the annual Budget Act for
32 this activity. The board shall review and revise the fees each fiscal
33 year as necessary to conform with the revenue levels set forth in
34 the annual Budget Act. If the board determines that the revenue
35 collected during the preceding year was greater than, or less than,
36 the revenue levels set forth in the annual Budget Act, the board
37 may further adjust the annual fees to compensate for the over or
38 under collection of revenue.

39 (e) Annual fees imposed pursuant to this section for the 2003–04
40 fiscal year shall be assessed for the entire 2003–04 fiscal year.

1 (f) *Fees imposed on holders of riparian water rights or rights*
2 *to water appropriated prior to December 19, 1914, pursuant to*
3 *this chapter shall bear a fair or reasonable relationship to the*
4 *payor's burden on, or benefits from, the board's water rights*
5 *program funded by those fees.*

6 SEC. 13. *Section 1535 of the Water Code is amended to read:*

7 1535. (a) Any fee subject to this chapter that is required in
8 connection with the filing of an application, registration, request,
9 statement, or proof of claim, other than an annual fee required after
10 the period covered by the initial filing fee, shall be paid to the
11 board.

12 (b) If a fee established under subdivision (b) of Section 1525,
13 Section 1528, or Section 13160.1 is not paid when due, the board
14 may cancel the application, registration, petition, request, statement,
15 or claim, or may refer the matter to the State Board of Equalization
16 for collection of the unpaid fee.

17 SEC. 14. *Section 1538 of the Water Code is amended to read:*

18 1538. (a) In any proceeding pursuant to Section 1052 in which
19 it is determined that there has been a violation of the prohibition
20 against the unauthorized diversion or use of water subject to this
21 division, the board or court, as the case may be, may impose an
22 additional liability in the amount of *150 percent of any annual fees*
23 *that would have been required under this division if the diversion*
24 *or use had been authorized by a permit or license to appropriate*
25 *water.*

26 (b) *In any proceeding pursuant to Section 5107 in which the*
27 *board imposes liability for a failure to file a statement of diversion*
28 *and use or for a material misstatement in a statement of diversion*
29 *and use, the board may impose an additional liability in the amount*
30 *of 150 percent of any fees that have not been paid but would have*
31 *been required under this division if the statement of diversion and*
32 *use had been filed and did not make any material misstatement.*

33 (c) *The additional liability imposed under this section may*
34 *include interest, at the rate provided under Section 685.010 of the*
35 *Code of Civil Procedure, from the dates the annual fees would*
36 *have been assessed.*

37 SEC. 15. *Section 1550 of the Water Code is amended to read:*

38 1550. (a) There is in the State Treasury a Water Rights Fund,
39 which is hereby established.

1 **(b)** *There is hereby established the Water Rights Protection*
2 *Subaccount in the Water Rights Fund. It is the intent of the*
3 *Legislature that the moneys in the Water Rights Protection*
4 *Subaccount be available for expenditure, upon appropriation by*
5 *the Legislature, to reduce fees on water right holders, for water*
6 *restoration projects, conservancies, and for General Fund*
7 *purposes.*

8 **SEC. 16.** *Section 1551 of the Water Code is amended to read:*

9 1551. All of the following shall be deposited in the Water
10 Rights Fund:

11 **(a)** All fees, expenses, and penalties collected by the board or
12 the State Board of Equalization under this chapter and Part 3
13 (commencing with Section 2000).

14 **(b)** All funds collected under Section 1052, ~~1845, or Article 4~~
15 *(commencing with Section 1845) of Chapter 12, and Section 5107.*

16 **(c)** All fees collected under Section 13160.1 in connection with
17 certificates for activities involving hydroelectric power projects
18 subject to licensing by the Federal Energy Regulatory Commission.

19 **SEC. 17.** *Section 1825 of the Water Code is amended to read:*

20 1825. It is the intent of the Legislature that the state should
21 take vigorous action to enforce the terms and conditions of permits
22 licenses, certifications, and registrations to appropriate water, to
23 enforce state board orders and decisions, ~~and to prevent the~~
24 *unlawful diversion of water, and to prevent the waste,*
25 *unreasonable use, unreasonable method of use, or unreasonable*
26 *method of diversion, of water, and to enforce reporting and*
27 *monitoring requirements.*

28 **SEC. 18.** *Section 1826 is added to the Water Code, to read:*

29 1826. *The board shall establish a schedule of penalties that*
30 *applies to small farms for de minimis water right violations under*
31 *this division.*

32 **SEC. 19.** *Section 1845 of the Water Code is amended to read:*

33 1845. **(a)** Upon the failure of any person to comply with a
34 cease and desist order issued by the board pursuant to this chapter,
35 the Attorney General, upon the request of the board, shall petition
36 the superior court for the issuance of prohibitory or mandatory
37 injunctive relief as appropriate, including a temporary restraining
38 order, preliminary injunction, or permanent injunction.

39 **(b)** **(1)** Any person or entity who violates a cease and desist
40 order issued pursuant to this chapter may be liable for a sum in an

1 ~~amount not to exceed one thousand dollars (\$1,000) for each day~~
2 ~~in which the violation occurs; the greater of either of the following~~
3 ~~amounts:~~

4 (A) *One thousand dollars (\$1,000) for each day in which the*
5 *violation occurs for the first enforcement proceeding or five*
6 *thousand dollars (\$5,000) for each day in which the violation*
7 *occurs for any subsequent enforcement proceeding.*

8 (B) *The highest market value of the water as determined on a*
9 *regional basis.*

10 (2) Civil liability may be imposed by the superior court. The
11 Attorney General, upon the request of the board, shall petition the
12 superior court to impose, assess, and recover those sums.

13 (3) Civil liability may be imposed administratively by the board
14 pursuant to Section 1055.

15 (c) In determining the appropriate amount, the court, or the
16 board, as the case may be, shall take into consideration all relevant
17 circumstances, including, but not limited to, the extent of harm
18 caused by the violation, the nature and persistence of the violation,
19 the length of time over which the violation occurs, and, *with respect*
20 *to the violator, the ability to pay, the effect on the ability to continue*
21 *in business, the corrective action, if any, taken by the violator, and*
22 *other matters as justice may require.*

23 (d) (1) All funds recovered pursuant to this section shall be
24 deposited in the Water Rights Fund established pursuant to Section
25 1550.

26 (2) *Any funds recovered pursuant to this section that exceed the*
27 *amounts that were authorized before January 1, 2011, shall be*
28 *deposited in the Water Rights Protection Subaccount in the Water*
29 *Rights Funds established pursuant to Section 1550.*

30 (e) *The increase in the amount of penalties that may be imposed*
31 *pursuant to the amendments made to this section by this act during*
32 *the 2009–10 Regular Session of the Legislature does not apply to*
33 *violations that occurred prior to January 1, 2011.*

34 SEC. 20. Section 1846 is added to the Water Code, to read:

35 1846. (a) Any person or entity subject to a monitoring or
36 reporting requirement specified in subdivision (f) who violates
37 that reporting or monitoring requirement, makes a material
38 misstatement in any record or report submitted under that
39 reporting or monitoring requirement, or tampers with or renders
40 inaccurate any monitoring device required under that reporting

1 *or monitoring requirement shall be liable for a sum not to exceed*
2 *five hundred dollars (\$500) for each day in which the violation*
3 *occurs.*

4 *(b) Civil liability may be imposed by the superior court. The*
5 *Attorney General, upon the request of the board, shall petition the*
6 *superior court to impose, assess, and recover those sums.*

7 *(c) Civil liability may be imposed administratively by the board*
8 *pursuant to Section 1055.*

9 *(d) In determining the appropriate amount, the court, or the*
10 *board, as the case may be, shall take into consideration all relevant*
11 *circumstances, including, but not limited to, the extent of harm*
12 *caused by the violation, the nature and persistence of the violation,*
13 *the length of time over which the violation occurs, and, with respect*
14 *to the violator, the ability to pay, the effect on the ability to*
15 *continue in business, the corrective action, if any, taken by the*
16 *violator, and other matters as justice may require.*

17 *(e) All funds recovered pursuant to this section shall be*
18 *deposited in the Water Rights Protection Subaccount in the Water*
19 *Rights Fund established pursuant to Section 1550.*

20 *(f) (1) This section applies to any reporting or monitoring*
21 *requirement established under any permit, license, certificate,*
22 *registration, decision or order, or regulation issued by the board*
23 *pursuant to this division, Section 275, Article 7 (commencing with*
24 *Section 13550) of Division 7, or the public trust doctrine.*

25 *(2) This section also applies to any reporting or monitoring*
26 *requirement established by the department under Section 275, if*
27 *the department requests enforcement pursuant to this section.*

28 *(3) This section does not provide a basis for imposing liability*
29 *on a watermaster who is subject to reporting or monitoring*
30 *requirements but does not divert or use the water subject to those*
31 *requirements.*

32 *SEC. 21. Section 1847 is added to the Water Code, to read:*

33 *1847. (a) Any person or entity who violates any term or*
34 *condition of a permit, license, certificate, or registration issued*
35 *under this division or any order or regulation adopted by the board*
36 *under Section 275 may be liable in an amount not to exceed five*
37 *hundred dollars (\$500) for each day in which the violation occurs.*

38 *(b) Civil liability may be imposed by the superior court. The*
39 *Attorney General, upon the request of the board, shall petition the*
40 *superior court to impose, assess, and recover those sums.*

1 (c) Civil liability may be imposed administratively by the board
2 pursuant to Section 1055.

3 (d) In determining the appropriate amount, the court, or the
4 board, as the case may be, shall take into consideration all relevant
5 circumstances, including, but not limited to, the extent of harm
6 caused by the violation, the nature and persistence of the violation,
7 the length of time over which the violation occurs, and, with respect
8 to the violator, the ability to pay, the effect on the ability to
9 continue in business, the corrective action, if any, taken by the
10 violator, and other matters as justice may require.

11 (e) No liability shall be recoverable under this section for any
12 violation for which liability is recovered under Section 1052 or
13 1846.

14 (f) All funds recovered pursuant to this section shall be deposited
15 in the Water Rights Protection Subaccount in the Water Rights
16 Fund established pursuant to Section 1550.

17 SEC. 22. Section 5103 of the Water Code, as amended by
18 Section 5 of Chapter 2 of the Seventh Extraordinary Session of the
19 Statutes of 2009, is amended to read:

20 5103. Each statement shall be prepared on a form provided by
21 the board. The statement shall include all of the following
22 information:

23 (a) The name and address of the person who diverted water and
24 of the person filing the statement.

25 (b) The name of the stream or other source from which water
26 was diverted, and the name of the next major stream or other body
27 of water to which the source is tributary.

28 (c) The place of diversion. The location of the diversion works
29 shall be depicted on a specific United States Geological Survey
30 topographic map, or shall be identified using the California
31 Coordinate System, or latitude and longitude measurements. If
32 assigned, the public land description to the nearest 40-acre
33 subdivision and the assessor's parcel number shall also be provided.

34 (d) The capacity of the diversion works and of the storage
35 reservoir, if any, and the months in which water was used during
36 the preceding calendar year.

37 (e) (1) On and after January 1, 2012, monthly records of water
38 diversions. The measurements of the diversion shall be made using
39 best available technologies and best professional practices. Nothing
40 in this paragraph shall be construed to require the implementation

1 of technologies or practices by a person who provides to the board
2 documentation demonstrating that the implementation of those
3 practices is not locally cost effective.

4 (2) (A) The terms of, and eligibility for, any grant or loan
5 awarded or administered by the department, the board, or the
6 California Bay-Delta Authority, *or its successor* on behalf of a
7 person that is subject to paragraph (1) shall be conditioned on
8 compliance with that paragraph.

9 (B) Notwithstanding subparagraph (A), the board may determine
10 that a person is eligible for a grant or loan even though the person
11 is not complying with paragraph (1), if both of the following apply:

12 (i) The board determines that the grant or loan will assist the
13 grantee or loan recipient in complying with paragraph (1).

14 (ii) The person has submitted to the board a one-year schedule
15 for complying with paragraph (1).

16 (C) It is the intent of the Legislature that the requirements of
17 this subdivision shall complement and not affect the scope of
18 authority granted to the board by provisions of law other than this
19 article.

20 (f) The purpose of use.

21 (g) A general description of the area in which the water was
22 used. The location of the place of use shall be depicted on a specific
23 United States Geological Survey topographic map and on any other
24 maps with identifiable landmarks. If assigned, the public land
25 description to the nearest 40-acre subdivision and the assessor's
26 parcel number shall also be provided.

27 (h) The year in which the diversion was commenced as near as
28 is known.

29 *SEC. 23. Section 5106 of the Water Code is amended to read:*

30 5106. (a) Neither the statements submitted under this part nor
31 the determination of facts by the board pursuant to Section 5105
32 shall establish or constitute evidence of a right to divert or use
33 water.

34 (b) (1) The board may rely on the names and addresses included
35 in statements submitted under this part for the purpose of
36 determining the names and addresses of persons who are to receive
37 notices with regard to proceedings before the board.

38 (2) Notwithstanding paragraph (1), any person may submit, in
39 writing, a request to the board to provide notification to a different
40 address, and the board shall provide the notification to that address.

(3) If the board provides notice to persons who file statements under this part, the notice shall not be determined to be inadequate on the basis that notice was not received by a person, other than a party to whom the board's action is directed, who fails to file a statement required to be filed under this part.

(4) This subdivision does not affect the requirement in Section 2527 to provide notice to all persons who own land that appears to be riparian to the stream system.

(c) In any proceeding before the board to determine whether an application for a permit to appropriate water should be approved, any statement submitted under this part or determination by the board pursuant to Section 5105 is evidence of the facts stated therein.

(d) (1) *In any proceeding before the board in which it is alleged that an appropriative right has ceased or is subject to forfeiture for nonuse because water has not been put to beneficial use, there shall be a rebuttable presumption that no use required to be included in a statement submitted under this part occurred unless that use is included in a statement submitted under this part and that the statement is submitted within six months after it is required to be filed with the board.*

(2) *Paragraph (1) does not apply to any use that occurred before January 1, 2010.*

(3) *The rebuttable presumption established in paragraph (1) applies only if the failure to file the statement is shown to be willful.*

~~SECTION 1. Part 5.5 (commencing with Section 12567) is added to Division 6 of the Water Code, to read:~~

~~PART 5.5. OCEAN DISCHARGE RECYCLING PLAN~~

~~CHAPTER 1. GENERAL PROVISIONS~~

~~12567. The Legislature finds and declares the following:~~

~~(a) Each year, urban water users in California discharge approximately 3,500,000 to 4,000,000 acre-feet of wastewater into the ocean. Unlike discharges into rivers and streams, which can be recaptured downstream and reused, ocean discharges are not reused. This water is truly wasted.~~

~~(b) Urban California continues to grow. The Department of Finance projects California's population to reach almost 60,000,000~~

1 people by the year 2050, an increase of over 25,000,000 people
2 since the 2000 decennial census. These new Californians will need
3 water.

4 (e) It is critical that California find new ways to accommodate
5 growth, with its resultant increase in water demand, in a manner
6 that is as environmentally benign as possible.

7 (d) Water recycling has long been recognized as a method of
8 helping to meet California's water needs that is cost effective and
9 not affected by drought.

10 12567.1. For the purposes of this part, the following terms have
11 the following meanings:

12 (a) "Fee" means the annual fee imposed pursuant to subdivision
13 (a) of Section 12568.

14 (b) "Fund" means the Ocean Discharge Recycling Fund
15 established pursuant to subdivision (a) of Section 12568.4.

16 (c) "Plan" means the statewide plan adopted pursuant to Section
17 12567.2.

18 12567.2. (a) The board, in consultation with the department
19 and the State Department of Public Health, shall adopt a statewide
20 plan to ensure that at least 50 percent of the wastewater annually
21 discharged directly into the ocean, as of the year 2009, is recycled
22 and put to beneficial use by the year 2030.

23 (b) The plan shall do all of the following:

24 (1) Identify the amount of water discharged directly into the
25 ocean, the San Francisco Bay, and any other enclosed bay in the
26 state, during the 2009 calendar year.

27 (2) Establish a statewide ocean discharge recycling goal that is
28 one-half of the amount identified pursuant to paragraph (1).

29 (3) Identify all regulatory, financial, engineering, jurisdictional,
30 and other impediments to meeting the statewide ocean discharge
31 recycling goal.

32 (4) Identify all impediments to direct potable reuse of the water
33 described in paragraph (1).

34 (5) Develop specific actions and strategies to remove the
35 impediments identified pursuant to paragraphs (3) and (4).

36 (c) In developing the plan, the board shall do all of the
37 following:

38 (1) Seek input from wastewater dischargers, urban water
39 suppliers, local government agencies, and other interested parties.

~~(2) Ensure that any action authorized pursuant to this chapter is consistent with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).~~

~~(3) Integrate research by the board regarding unregulated pollutants, as developed pursuant to Section 10 of the Recycled Water Policy adopted by State Water Resources Control Board Resolution No. 2009-0011.~~

~~(d) The board may appoint an advisory committee, task force, or any other group or groups that the board determines to be necessary or desirable to assist the board in implementing this part.~~

~~(e) Upon adoption of the plan, the board shall submit copies of the plan to the Governor and the Legislature.~~

~~(f) Any action authorized pursuant to this chapter shall be consistent with the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.) and the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000)).~~

CHAPTER 2. FINANCING

~~12568. (a) The board shall impose an annual fee on discharges of wastewater into the ocean, subject to the following requirements:~~

~~(1) (A) Except as provided in subparagraph (B), the fee shall be imposed on each person that discharges wastewater directly into the ocean, the San Francisco Bay, or any other enclosed bay in the state, as determined by the board.~~

~~(B) The fee shall not be imposed on any person that discharges less than 10,000,000 gallons of wastewater per day.~~

~~(2) The fee shall be in addition to any fees imposed pursuant to Section 13260.~~

~~(3) The fee shall be in an amount that does not exceed the amount necessary to reimburse the board, the department, and the State Department of Public Health for the costs of developing the plan and any measures implementing the plan pursuant to Section 12567.2.~~

~~(4) The board shall adopt a fee schedule and a timetable for purposes of collecting the fee.~~

~~(5) The fee shall be collected in the same manner as set forth in Section 13260.~~

1 ~~(b) The board shall adopt regulations to implement the fee~~
2 ~~collection procedures set forth in this section.~~

3 ~~12568.2. Each person that is subject to the fee shall pay an~~
4 ~~annual fee to the board in accordance with Section 12568.~~

5 ~~12568.4. (a) All fees collected pursuant to this chapter shall~~
6 ~~be deposited in the Ocean Discharge Recycling Fund, which is~~
7 ~~hereby established in the State Treasury.~~

8 ~~(b) The moneys in the fund shall be available for expenditure~~
9 ~~by the board, upon appropriation by the Legislature, for the~~
10 ~~purposes of carrying out this part.~~